

ESTTA Tracking number: **ESTTA447789**

Filing date: **12/21/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194772
Party	Plaintiff Cannery Casino Resorts, LLC
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Date	12/21/2011
Attachments	91194772 M to Stay Deadline for Pretrial Discl and Intent to Comply.pdf (5 pages)(144284 bytes)

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Joy A. Jones, Counsel

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cannery Casino Resorts, LLC,

Opposer,

vs.

Omri S. Shellef,

Applicant.

Marks:

EAST SIDE SOCIAL CLUB,
Serial No. 77/767677

Opposition No.: 91194772

**OPPOSER'S MOTION TO STAY DEADLINE FOR SERVING PRETRIAL
DISCLOSURES AND NOTICE OF INTENT TO COMPLY**

Opposer Cannery Casino Resorts, LLC (“CCR”), by and through its undersigned counsel of record, respectfully requests that the Trademark Trial and Appeal Board (the “Board”) enter an Order staying the deadline for CCR to make its Pretrial Disclosures.¹ This Motion to Stay is based upon the records and pleadings on file herein, the memorandum of points and authorities set for below, and any further evidence received by the Board.

I. MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction.

As set forth in detail in its MJS and Motion to Amend, CCR learned through discovery that Applicant Omri S. Shellef (“Applicant”) does not and has never offered a vast majority of the services that Applicant has alleged he has offered with regard to his applications for the mark EAST SIDE SOCIAL CLUB (the “Shellef Marks”)—in particular with regard to Applicant’s

¹ This Motion to Stay Deadline for Serving Pretrial Disclosures (the “Motion to Stay”), and the concurrent Notice of Intent to Comply (the “Notice of Intent”) is filed simultaneously with CCR’s Motion for Summary Judgment (the “MSJ”) and Motion for Leave to Amend Notice of Opposition (the “Motion to Amend”).

application in Class 43 (the “Class 43 Mark”). Moreover, Applicant does not use the Shellef Marks “in commerce” as required under the Lanham Act, and has not and does not use the Shellef Marks in interstate commerce. For these readily-demonstrable reasons, CCR has sought to amend its Notice of Opposition to add claims based upon Applicant’s non-use of the Class 43 Mark and a lack of use in commerce and use in interstate commerce of the Shellef Marks, and CCR has sought the entry of summary judgment on these same bases given that the undisputed facts surrounding Applicant’s failure to offer claimed services, failure to use the Shellef Marks in commerce, and failure to use the Shellef Marks in interstate commerce, are wholly dispositive of this matter.

Nevertheless, the present deadline for CCR to serve its Pretrial Disclosures is December 21, 2011. Given that CCR believes its MSJ will fully resolve this matter, CCR respectfully requests that the Board stay the current deadline for CCR to serve its Pretrial Disclosures and stay related trial deadlines, and set new deadlines (if necessary) that are either (1) within a reasonable period of time of the date that the Board denies the MSJ (if such a denial in fact occurs), or (2) within ten (10) days of the Board’s denial of this Motion to Stay (if such a denial in fact occurs).

B. Argument.

By its Order dated June 8, 2011, the Board set the following operative deadlines in this matter:

Plaintiff's Pretrial Disclosures Due	12/21/2011
Plaintiff's 30-day Trial Period Ends	02/04/2012
Defendant's Pretrial Disclosures Due	02/19/2012
Defendant's 30-day Trial Period Ends	04/04/2012

Plaintiff's Rebuttal Disclosures Due

04/19/2012

Plaintiff's 15-day Rebuttal Period Ends

05/19/2012

The Board has broad discretion to determine that the filing of a motion for summary judgment provides a party with good cause for not complying with an otherwise outstanding obligation. *See Leeds Technologies Limited v. Topaz Communications Ltd.*, 65 USPQ2d 1303 (TTAB 2002) (regarding suspension in the case of a motion for judgment on the pleadings); *Electronic Industries Association v. Potega*, 50 USPQ2d 1775, 1776 n.4 (TTAB 1999) (regarding suspension in the case of a motion for sanctions in the nature of judgment).

As CCR has set forth in detail in both its MSJ and Motion to Amend, Applicant's failure to offer claimed services, failure to use the Shellef Marks in commerce, and failure to use the Shellef Marks in interstate commerce, are wholly dispositive of this matter. To the extent that the Board agrees with CCR's contentions regarding these matters—and grants both the MSJ and the Motion to Amend—each of the deadlines above will be wholly unnecessary. Thus, CCR requests that the Board stay, at a minimum, CCR's deadline for serving its Pretrial Disclosures, and that the Board also stay related trial deadlines, pending the Board's resolution of the MSJ and the Motion to Amend.

Moreover, the Board should take notice that CCR intends to comply with any deadline that the Board sets with regard to CCR's serving its Pretrial Disclosures, and related trial deadlines, pending resolution of this Motion to Stay.

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C. Conclusion.

For the foregoing reasons, CCR respectfully requests that this Board grant this Motion to Stay, and set a new deadline by which CCR must serve its Pretrial Disclosures—if necessary—that is either (1) within a reasonable period of time of the date that the Board denies the MSJ (if such denial in fact occurs), or (2) within ten (10) days of the Board’s denial of this Motion to Stay (if such denial in fact occurs)

SANTORO, DRIGGS, WALCII, et al.

Dated: December 21, 2011



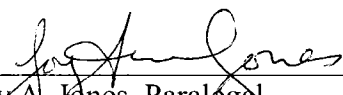
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Motion for Leave to Amend Notice of Opposition was served via First Class Mail, postage prepaid, on this 21st day of December, 2011, upon:

Mr. Omri S. Shellef
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